Suffice it to say, therefore, that after full consideration and having consulted the Public Trustee (the Official Administrator would prefer to act in this other of his capacities in this case) and with his consent I have decided of my own motion to revoke the Grant, to order that a Grant for the due administration of the estate of the deceased should issue to the Public Trustee. The Public Trustee will, of course, file his consent within the next few days and that will form part of the Court record.

The order will be that the petition granted on the 21st June, 1956 be revoked, that accounts be filed by the grantee who had not extracted the grant but had continued to act and that the balance be paid to the Assistant Public Trustee, Penang. There will be an order revoking the Grant and making a Grant to the Public Trustee as stated above. An order that accounts be filed by the applicants herein and the balance found due paid to the Assistant Public Trustee, Penang within one month, the Assistant Public Trustee's receipt being a full and sufficient discharge. Liberty to apply. The Assistant Public Trustee to charge the usual statutory fees and deduct his proper expenses.

Application dismissed.

Solicitor: *Lee Thean-Chu.*

PUBLIC PROSECUTOR v. SAJJAN SINGH

[A. Cr. J. (Hepworth J.) July 9, 1957]
[Malacca — Criminal Appeal No. 8 of 1957]

Penal Code s. 193 — Giving false evidence — Sanction of Deputy Public Prosecutor — Criminal Procedure Code (Cap. 21), ss. 138(1)(d) & 139(1)(b).

In this case the record of a civil suit in the High Court was transmitted to the Deputy Public Prosecutor by the trial Judge to consider the evidence and whether or not the accused should be charged with an offence under section 193 of the Penal Code. The Deputy Public Prosecutor having considered the matter issued a sanction under section 139(1)(b) of the Criminal Procedure Code (Cap. 21). The accused was thereupon charged in Court. The learned President acquitted the accused, one of his grounds being that no proper complaint had been filed.

Held: the effect of the provisions of section 138(1)(d) of the Criminal Procedure Code (Cap. 21) is that once the accused is before the Court there is jurisdiction to try him and the Judge is not concerned with how he got into the dock.

Cases referred to:—

(1) *R. v. Syed Mohamed bin Tahir Allhabshee* 3rd Singapore Assizes, 1931 — unreported.

(2) *Lee Sang Cheah v. R.* (1946) M.L.J. 22.

MAGISTRATE'S CRIMINAL APPEAL.

L. A. Massie (Federal Counsel) for the appellant.

R. P. S. Rajasooria for the respondent.

Hepworth J.: — The Petition sets out concisely the points arising on this Appeal and I shall take these points in the order in which they appear in the Petition.

The first ground of appeal is that the learned President was wrong in holding that he had no jurisdiction to try the case. This does not appear to have been argued before him and he states no reason or authority for coming to this conclusion. In view of the provision of section 63 of the Courts Ordinance, 1948, it is difficult to see how the learned President came to such a decision because it is abundantly clear from that section that the Sessions Court has jurisdiction to try an offence under section 193 of the Penal Code.

The second ground of appeal is that the learned President was wrong in holding that the Accused should be acquitted and discharged because no proper complaint was filed. In this case the record of a civil suit in the High Court was transmitted to the Deputy Public Prosecutor by the trial Judge to enable the Deputy Public Prosecutor to consider the evidence and whether or not the Accused should be charged with an offence under section 193 of the Penal Code. The learned Deputy Public Prosecutor, having considered the matter, issued a sanction under section 139(1)(b) of the Criminal Procedure Code to the police to prosecute the Accused under section 193 of the Penal Code. In the case of *R. v. Syed Mohamed bin Tahir Allhabshee*[1], Sproule Ag. C.J., ruled that the sanction of the Deputy Public Prosecutor is sufficient for a charge under section 193 of the Penal Code and that the sanction of the Court is not required, and accordingly the requirements of section 139 of the Criminal Procedure Code were satisfied. The Accused was then brought before the learned President. A perusal of section 138 shows that a Court may take cognisance of an offence, not only upon receiving a complaint, but in the circumstances set out in paragraphs (b), (c) and (d) of sub-section (1) of that section. The effect of the provisions of section 138(1)(d) is that once the Accused is before the Court there is jurisdiction to try him under this section, and thus the learned President was not concerned with how he got into the dock (see footnote to section 138 in *Mallal's* Criminal Procedure, 3rd Edn. at p. 158* and *Lee Sang Cheah v. R.*[2]).

The third ground of appeal is that the learned President was wrong in holding that an opportunity should have been given to the Accused to show cause why he should not be prosecuted before a complaint of perjury could be filed. It would appear that the learned President was confusing the procedure under section 12 of the Oaths and Affirmations Ordinance, 1949, which is only applicable in cases of summary punishment of perjury in open Court and was not applicable in this case.

* See now *Mallal's* Criminal Procedure 4th Ed. p. 177.

The fourth ground of appeal is that the learned President misdirected himself in holding that a corroborative witness was essential to substantiate the fact that the Accused had made a statement false to his knowledge or belief. Corroborative evidence in certain circumstances may be desirable, and it may be so in this case, but it is not essential. PW4 gave evidence that he saw the Accused sign the document which the Accused had denied in the High Court he had signed. It would appear from the learned President's grounds of judgment that he accepted PW4's evidence because, if he had not, then the question of corroboration would not have arisen. If he accepted PW4's evidence then he was entitled, having considered all the aspects of the case, to call upon the Accused for his defence without any corroboration whatever of the evidence of PW4. It appears however from the learned President's grounds of judgment that, although he accepted the evidence of PW4, he came to the conclusion that the evidence adduced was not sufficient to warrant a conviction at the end of the prosecution case simply because as a matter of law corroboration of the evidence of PW4 was essential, and there was no corroboration. In the circumstances of this case it appears to me that the prosecution had made out a *prima facie* case against the Accused at the end of their case and accordingly the learned President should have called upon the Accused for his defence. He would then have been in a position to consider whether the evidence for the defence was sufficient to cast a reasonable doubt on the prosecution case.

In view of the above therefore I quashed the order of acquittal and discharge, and ordered that the case be remitted to the Sessions Court and that the Sessions Court should call upon the Accused to enter upon his defence.

Order accordingly.

REG. v. W. N. HAMMAR

[A. Cr. J. (Shepherd J.) June 21, 1957]

[Penang — Criminal Appeal No. 13 of 1957]

Criminal Procedure — Sentence — Inadequacy — Deterrent effect — Purposes of punishment — Member of visiting Armed Force.

In assessing punishment Magistrates and others should avoid punishments which amount to mere pin-pricks. These are merely annoying or irritating and do not correct or deter.

Question of the punishment of a soldier, a member of a visiting Armed Force on duty here with the express purpose of protecting the citizens of this country, considered.

Case referred to:—

(1) *R. v. Murukaiyan Rasoo* (1957) M.L.J. 26.

MAGISTRATE'S CRIMINAL APPEAL.

F. G. Cooke (Federal Counsel) for the appellant.

Respondent in person.

Shepherd J. : — This is an appeal by the Deputy Public Prosecutor against the inadequacy of the sentence passed by the learned Magistrate, Penang, in dealing with an offence committed by one Walter Neialle Hammar, a member of the Royal Australian Regiment, when he was charged and tried on the following charge :—

"You are charged that you on the 9th day of December, 1956, at about 10.30 p.m. on board the ferry 'Tenggiri' voluntarily caused hurt to one Ong Leng Ah (m) and thereby committed an offence punishable under Section 323 of the Penal Code."

A conviction was entered under section 352 — assault — and the accused was fined $15 and ordered to pay $25 compensation.

The facts are that rather late at night on the 9th December, 1956, when cars, including the car driven by the respondent, were being driven on to the ramp of the ferry boat at Mitchell Pier, Butterworth, the respondent appears to have thought that the car of the complainant Ong Leng Ah (described as a merchant) — a small Hillman car — had jockeyed ahead of him by going on to the ramp first. In any event there seems to be no doubt that the respondent's car bumped against the car of the complainant and when the complainant got out and complained in probably very emphatic terms at this treatment, the respondent is stated to have been abusive and then the following offence appears to have been committed in the manner which I will describe. The complainant took out his notebook and made a note of the respondent's car number. The respondent objected to this and asked if the complainant was going to report to the Police. In the course of this altercation the respondent struck the complainant on the face and tore his shirt. The respondent in evidence before the Magistrate did not admit these facts but stated that he was first struck by the complainant and that he retaliated, but from the prosecution evidence the learned Magistrate believed that it was an unprovoked assault by the respondent. He said in his grounds of judgment :—

"The evidence for the prosecution, which I accepted, clearly shows that defendant committed a somewhat savage and completely unprovoked assault on Ong Leng Ah, a merchant of 444, Penang Road, Penang, as a result of which Ong received a 2" bruise on the cheek and he suffered a stiff neck for a day or two. His shirt was also torn. A medical officer — P.W. 1. — gave evidence that the bruise could have been inflicted by a punch of moderate force."

The learned Deputy Public Prosecutor in urging this appeal referred to the case of *Reg. v. Murukaiyan Rasoo*[1], where Whitton J. stated :—

"I do not think it is open to question that in deciding the appropriate sentence the first and foremost consideration by which the Court should be guided is the public interest."